IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 941 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BURKHAPOSH MASJID TRUST & 5 - Applicant(s)

Versus

KANAIYALAL MANHARLAL BHAGAT & 1 - Opponent(s)

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Appearance :

MR IA PATEL for Petitioner No(s).: 1.

(MR JV DESAI) for Petitioner No(s).: 2,3,4,5,6.

RULE SERVED for Respondent No(s).: 1.

RULE UNSERVED for Respondent No(s).: 2.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 11/07/2005

ORAL JUDGMENT

The respondent no. 2 has remained unserved for want of correct address. The respondent no.2 be deleted from the cause title of the Revision Application.

Feeling aggrieved by the judgment and order dated 7th November, 1981 passed by the appellate bench, Small Causes

Court, Ahmedabad in Civil Appeal No. 353 of 1981, the respondents-plaintiffs have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The petitioners-plaintiffs are the Burkhaposh Masjid Trust, a Public Trust and its trustees [hereinafter referred to as, "**the Trust**"]. The Trust owns a residential building situated at Shahpur, Ahmedabad. Four rooms bearing Municipal Census No. 1541, 1541/1. 1541/2, 1541/3 in the said building were leased to the defendant no.1 for a monthly rent of Rs. 120/= exclusive of municipal taxes and Education Cess. By Order dated 4th September, 1972 made in Misc. Civil Application No. 544 of 1971, the standard rent of the suit rooms came to be fixed at Rs. 120/= per month. It appears that the suit rooms were leased to the defendant no. 1 on 6th February, 1971. The rent note Exh.50 in that behalf was executed by the defendant no.2 on 26th August, 1971. On 6th February, 1971, the defendant no. 1 filed Misc. Civil Application No. 544 of 1971 in the Court of Small Causes, Ahmedabad for determination of standard rent of the suit rooms. On the same day, a compromise purshis was entered in the said Application. On the basis of said compromise purshis, the order was made on 4th September, 1972.

As the defendant no.1 was in arrears of rent since September 1975, the Trust instituted HRP Suit No. 1891 of 1977 in the Court of Small Causes, Ahmedabad for recovery of possession of suit rooms on the grounds that the defendant no.1 was in arrears of rent and that the defendant no. 1 had unlawfully sublet one of the suit rooms to the defendant no.2 for his residence. The learned trial Judge, by judgment and order dated 15th September, 1981 held that the defendant was in arrears of rent, as alleged; that the matter was covered by Section 12 (3)(b) of the Rent Act and that the defendant no. 1 had failed to comply with the conditions mentioned in Section 12 (3) (b) of the Rent Act i.e. on the first date of hearing [*the date on which the trial Court framed the issues viz., 6th March, 1981*], the defendant no. 1 had not paid the amount of rent due. The trial Court also held that the defendant no.1 had unlawfully sublet one of the suit rooms to the defendant no.2 for his residence. The trial Court, therefore, passed decree for possession and recovery of rent due, as prayed for.

Feeling aggrieved, the defendant no.1 preferred Civil Appeal No. 353 of 1981 before the appellate bench, Small Causes Court, Ahmedabad. The appellate bench held that the order of standard rent made in Misc. Civil Application

No. 544 of 1971 was obtained by fraud. The trial Court was, therefore, required to determine the standard rent afresh. The defendant no. 1, therefore, was not under obligation to comply with the conditions mentioned in Section 12 (3)(b) of the Rent Act. As on the date of the decree, the defendant no. 1 had paid up the amount of arrears of rent and the taxes. As to the subletting, the lower appellate court was of the opinion that the evidence of the defendant no. 2 was not credit-worthy and that the unlawful subletting was not proved by the Trust. *Consequently*, the lower appellate Court allowed the Appeal and set-aside the decree for eviction. Feeling aggrieved, the Trust has preferred the present Revision Application.

It is true that the suit rooms were leased to the defendant no. 1 for a factory on 6th February, 1971. On the very day, the defendant no. 1 moved Misc. Civil Application for fixation of the standard rent of the suit rooms. The compromise purshis also was filed on the same date, although the order in terms of the compromise was made on 4th September, 1972. In the written statement the defendant no.1 did raise dispute as to the standard rent of the suit rooms. According to the defendant no. 1, the standard rent of each of the suit rooms was Rs. 8/= per month; inclusive of taxes. The defendant no. 1 also questioned the legality of the aforesaid order dated 4th

September, 1972 on the ground that the said order was made by the Small Causes Court, Ahmedabad without *jurisdiction*. It was, however, never the case of the defendant no. 1 that the said order was obtained by fraud or misrepresentation or that the defendant no. 1 was made to sign the compromise under duress or under undue influence. In my view, therefore, the lower appellate Court has erred in holding that the order dated 4th September, 1972 was obtained by fraud and that it was not binding to the parties. The lower appellate Court has also erred in holding that the trial Court was required to determine the standard rent afresh and that until the standard rent was fixed by the trial Court, the defendant no. 1 was under no obligation to pay the amount of rent due or the monthly rent pending the suit as envisaged by Section 12 (3)(b) of the Rent Act. It is well settled that even a consent decree is equally binding to the parties. Moreover, though the defendant no. 1 had raised specific contention that the standard rent of each of the suit room was Rs. 8/= and the standard rent of the suit rooms should not be more than Rs. 30/= per month, he did not produce any evidence in support of this plea. In his oral evidence also, he did not refer to the standard rent of the suit rooms. Thus, it is evident that the dispute as to the standard rent raised by the defendant no. 1 in his written statement was not genuine. The defendant no. 1, therefore, was not absolved

from complying with the conditions referred to in Section 12 (3)(b) of the Rent Act till the suit was heard and the standard rent was decided afresh by the trial Court.

Section 12 (3)(b) of the Rent Act, as it then stood, required that the tenant shall, on the first date of hearing of the suit, pay or deposit, the amount of rent due and shall pay the rent regularly every month thereafter. *Admittedly*, the defendant no. 1 did not pay the amount of rent due on the first date of hearing of the suit. Thereafter also, it is not demonstrated that the defendant no.1 paid the rent every month regularly. As recorded by the trial Court, as on 6th March, 1981 [*i.e., the first date of hearing of the suit*], the defendant no. 1 was in arrears of rent. Thereafter, he appears to have made few intermittent deposits. He made *lumpsum* deposit to make good the deficit by the date of the decree. Thus, the defendant no. 1 failed to comply with the conditions mentioned in Section 12 (3)(b) of the Rent Act to earn protection against eviction under that section. The lower appellate Court though observed that pending the Appeal the defendant no. 1 had made deposits towards the rent due, it did not examine whether the rent was paid regularly every month. In any view of the matter, as I have held that the defendant no. 1 was required to comply with the conditions mentioned in Section 12 (3)(b) of the

Rent Act, pending the suit and as he failed to do so, the defendant no. 1 had forfeited right to protection under Section 12 (3)(b) of the Rent Act. The payment of rent pending the Appeal was of no consequence. The decree for eviction was, therefore, inevitable.

As to the subletting, I am of the opinion that the lower appellate Court has given undue importance to the fact that in answer to the witness-summons issued upon the Reserve Bank of India, it was the defendant no. 2 who himself came to depose in favour of the plaintiff. As held by the trial Court, apart from the oral evidence of the plaintiff, there was other documentary evidence to support the allegation of unlawful subletting, coupled with the fact that the defendant no. 2 was served at the suit room. The trial Court observed that the plaintiff had unexpected support from the testimony of the defendant no. 2. The learned trial Judge had discussed the evidence in details and had found the testimony of the defendant no. 2 credible. In my opinion, the cogent reasons and the conclusions drawn by the learned trial Judge ought not to have been upset on the jejune ground that in answer to the witness-summons issued to the Reserve Bank of India, the defendant no. 2 appeared to give evidence. The lower appellate Court has erred in attributing mischief on the part of the Trust. I, therefore, hold that the plaintiff

was entitled to decree for eviction as envisaged by Section 13 (1)(e) also.

For the aforesaid reasons, the Revision Application is allowed with cost. The *impugned* judgment and order dated 16th January, 1989 passed by the appellate bench, Small Causes Court, Ahmedabad in Civil Appeal No. 353 of 1981 is quashed and set-aside. The judgment and decree for possession dated 15th September, 1981 passed by the learned Judge, Small Causes Court, Ahmedabad in HRP Suit NO. 1891 of 1977 is confirmed. Rule is made absolute.

{Miss R.M Doshit, J.}

Prakash*